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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/598,848
Filing Date: September 13, 2006
Appellant(s): LINDLBAUER, FRANZ

William G. Abbatt
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 05/26/2009 appealing from the Office action mailed 11/26/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,493,844	COMBRINK	2-1996
4,672,684	BARNES ET AL.	6-1987
4,596,696	SCOVILLE JR.	6-1986

(9) Grounds of Rejection

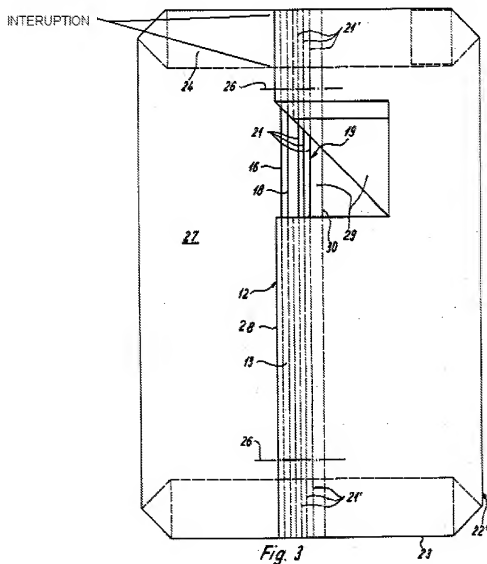
The following ground(s) of rejection are applicable to the appealed claims:

Claims 10-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As originally filed the specification does not contain the self sealing limitation added to claim 10; the limitation is considered impermissible **new matter**. Claims 11-20 depend upon claim 10, and are therefore rejected.

Claims 10-20 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Combrink (5493844) in view of Barnes et al. (4672684) and Scoville, Jr. (4596696).

As to claim 10 and 18, as best understood, Combrink discloses a multilayer, sack packaging medium 22' (fig. 3), comprising a broad front side and a broad rear side joined (as seen in fig. 3) by first and second narrower side areas (sack 22' inherently has a front, rear, and two sides; fig. 3), and closed at an upper end 24 and a lower end 23 (fig. 3), an opening 25 (fig. 2, 3) for filling, being free at the upper end 24, the packaging medium 22' having an inner wall 14 (col. 7, lines 1-19; fig. 2, 3) surrounded by an outer wall 15 (col. 7, lines 1-19; fig. 2, 3), comprising a plastic film ("thermoplastic sheet," col. 7, lines 9-13); wherein on the front side, the outer wall 15 overlaps a subregion 13 of up to 50% of the total area of the front side (fig. 3) to form an overlap region having an inner surface and an outer surface of the outer wall; at edges of the overlap region 13, the edges of the inner and outer surfaces of the outer wall 15 lying one above the other are joined to each other by means of seams, forming a joints (made up of 12; col. 5, line 37-40; fig. 2, 3); at one edge of the overlap region, the joint 12 is interrupted over a continuous region which covers 10 to 50% of the total length of the joint 12 (see fig. 3 below) to form an interruptions through which gas exiting the sack through perforations can pass; 10 to 50% of the area of the overlap region 13 is provided with perforations 20 (col. 7, lines 1-9; col. 5, lines 57-65; fig. 2, 3); the joint is interrupted free of perforations (fig 3); but does not disclose that: I) a distance of 0.5 to 10 cm from the edges of the overlap region 13 is maintained, II) the inner and outer wall material, and that the inner surface of the outer wall is perforated; III) wherein the sack

is self sealing such that upon filing of the sack, the two layers lying one above the other in the overlap region bear against each other forming a self-sealing seal. However, with regard to (I) above, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the distance such that the distance of 0.5 to 10 cm from the edges of the overlap region 13 is maintained, since it has been held that



discovering an optimum value of a result effective variable involves only routine skill in

the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Moreover, with regard to (II) above, Scoville, Jr. teaches a similar packaging medium ("test pack", col. 8 lines 34-56) comprising a front side and a rear side joined by first and second side areas, and closed at an upper end and a lower end (fig. 1-3) having an inner wall made of air-permeable material surrounded by an outer wall of air-impermeable material ("an outer container in the form of a box having a definite stable shape and being formed of a relatively steam and air permeable material coated with a form-stabilizing layer of a relatively steam and air impermeable material," col. 8, lines 35-39); the inner surface of the outer wall is perforated 17-21 (Scoville col. 4, lines 32-35; fig. 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device in the Combrink reference, to include the inner and outer wall material, and that the inner surface of the outer wall is perforated, as suggested and taught by Scoville, Jr., for the purpose of controlling air egress/ingress (col. 7, lines 42-60), thereby enhancing stability of the shape of the package. Furthermore, with regard to (III) above, Barnes discloses a similar sack (10; fig 1-6) with two layers (22, 13) in an overlapping region (fig 4) with is capable of having a joint free of perforations (col. 8, line 43-44) wherein the sack is self sealing such that upon filing of the sack, the two layers lying one above the other in the overlap region bear against each other forming a self-sealing seal (Barnes col. 7, line 46 – col. 8, line 44). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device in the combined references, such that the sack is self sealing such that upon filing of the sack, the two layers lying one above the other in the overlap region bear

against each other forming a self-sealing seal, as suggested and taught by Barnes, for the purpose of providing a device where "entrained air can exit through [a] mesh of [an] inner lining and vent to atmosphere through [a] perforated wall without losing unacceptable amounts of [a] fine powder product, instead of via [a] filling sleeve as the bag is being filled, and most important after [a] valve has self-sealed with entrained air still in the bag" (col. 3, line 51-58).

As to claim 11, Combrink discloses that the outer wall 15 overlaps only on the rear side (fig. 3).

As to claim 12-13, Combrink discloses the outer wall 15 overlaps (with overlap region 13) over its entire length (fig. 3).

As to claims 14-16, Combrink discloses that the interruption is in the upper half of the packaging medium 22' (see fig. 3 above).

As to claim 17, Combrink discloses that the inner wall 14 comprises nonwoven materials made of synthetic fibres and natural fibres ("non-woven fabric," col. 6, lines 1-2).

As to claims 19-20, Combrink discloses the transport and storage of particulate materials in a storage medium 22' (col. 5, line 30 – col. 7, line 30); wherein said particulate material includes flour ("powdery material," col. 2, lines 24-28).

(10) Response to Argument

Regarding appellant's argument that the 35 U.S.C. 112, first paragraph rejection is improper: appellant contends that the amendment "self-sealing packaging sack" to

claim 1 is supported by appellant's original specification which states that "the opening in the overlap region is closed by the inherent weight of the filled packaging medium."

Appellant's specification requires that the packaging medium must be filled by an unspecified material in order to close an opening of an overlap region. Claim 1 recites a "self-sealing packaging sack". Claim 1 does not state that a filling material causes the sack to seal. Furthermore, claim 1 does not claim a filling material within the sack and therefore there is no inherent weight within the claimed sack to self-seal it.

Consequently, this newly added limitation is deemed to be "new matter."

Regarding appellant's argument that the Scoville reference is non-analogous art: Combrink and Barnes disclose art from the same field as endeavor, as stated by appellant, with respect to sealed packages that control the flow of air with perforations, permeable and impermeable materials. Scoville also discloses a sealed package (figs 1-3, including bag 38 in fig 3;) that controls the flow of air ("like in FIGS. 1 and 2 suitable holes and a tear strip (not shown in FIG. 3) may be provided" col. 5, ll. 31-3, "some convenient number and distribution of holes or slots, as indicated at 17, 18, 19, 20 and 21, may be provided to allow air egress" col. 4, ll. 29-35, and "FIG. 2 shows a modification of FIG. 1 in respect of having round holes 32, 33, 34 and 35, instead of rectangular holes 17 through 21" col. 5, ll. 18-20) with perforations (17, 18, 19, 20, 21, 32, 33, 34, 35 in figs 1-3), permeable, and impermeable materials ("being formed of a relatively air and steam permeable material coated with a form-stabilizing layer of a relatively air and steam impermeable material, and a body of relatively air and steam

permeable material" abstract). Therefore, Scoville discloses analogous art from the same field of endeavor as Combrink and Barnes.

Regarding appellant's argument that the Scoville reference does not teach the claimed invention: Scoville teaches an inner wall made of air-permeable material surrounded by an outer wall of air-impermeable material ("being formed of a relatively steam and air permeable material coated with a form-stabilizing layer of a relatively steam and air impermeable material," col. 8, lines 35-39); the inner surface of the outer wall is perforated 17-21 (col. 4, lines 32-35; fig. 1). Appellant argues that the claim 18 requires an "outer polymer film which is impervious to air and moisture which is free of perforations." It is first noticed that this limitation is not necessary for the practice of the invention, as it is claimed only in dependent claim 18. Even so, Scoville discloses that a film relatively impermeable to steam is laminated on one side of the device, meaning that the film can be on the inside of the device or outside of the device (col. 2, ll. 64-69). Furthermore, the primary reference Combrink discloses an outer polymer film (15, "thermoplastic material, e.g. polyethylene" col. 5, ll. 30-46) which is impervious to air and moisture ("moisture-proof" col. 5, ll. 30-46) which is free of perforations (15 is free of perforations in figs 1-3; lower layer 14 is perforated) that provides for an internal layer underneath the inner and outer layer (col. 6, ll. 57-68).

Regarding appellant's argument that the Combrink reference does not teach the claimed invention: Combrink discloses that 10 to 50% of the area of the overlap region

13 is provided with perforations 20 (col. 7, lines 1-9; col. 5, lines 57-65; figs 2, 3). The overlap region 13 comprises equally sized layers 14 (50% of 13) and 15 (50% of 13), of which only 14 is perforated; therefore, 10-50% of the overlap region is perforated. Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a range of percentages of area of perforations, because it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges was an obvious extension of the prior teaching. *In re Aller*, 105 USPQ 233.

Combrink discloses that the joint 12 is interrupted over a continuous region which covers 10 to 50% of the total length of the joint 12 (see fig. 3 above) to form an interruption through which gas exiting the sack through perforations can pass. Applicant argues that there are no perforations in figure 3. However, perforations still exist within layer 14 and Combrink states that air can exit through the inactive adhesive strips 21 (col. 7, ll. 20-25). Furthermore, in figure 1, Combrink discloses an interruption 19 in which air can escape during the filling process (col. 5, ll. 57-65). Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a range of the length of the interruption, because it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges was an obvious extension of the prior teaching. *In re Aller*, 105 USPQ 233.

Regarding appellant's argument that the Barnes reference does not teach the claimed invention: Appellant argues that moisture can freely flow into Barnes. Combrink in view of Barnes discloses the intended use of preventing moisture into the device (Combrink "moisture-proof barrier layer" col. 7, ll. 1-19). Combrink in view of Scoville is modified by Barnes which is capable of having a joint free of perforations (col. 8, line 43-44) wherein the sack is self sealing such that upon filling of the sack, the two layers lying one above the other in the overlap region bear against each other forming a self-sealing seal (col. 7, line 46 – col. 8, line 44) for the purpose of providing a device where "entrained air can exit through [a] mesh of [an] inner lining and vent to atmosphere through [a] perforated wall without losing unacceptable amounts of [a] fine powder product, instead of via [a] filling sleeve as the bag is being filled, and most important after [a] valve has self-sealed with entrained air still in the bag" (col. 3, line 51-58).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/A. P./

Examiner, Art Unit 3728

Conferees:

/Ehud Gartenberg/

Supervisory Patent Examiner, Art Unit 3728

/Boyer D. Ashley/

Supervisory Patent Examiner, Art Unit 3724